

Appl. No. 10/728,676  
Response Dated January 15, 2009  
Reply to Office Action of October 15, 2008

Docket No.: P17115/1020P17115  
Examiner: Sciacca, Scott M.  
TC/A.U. 2446

## **REMARKS**

### **Summary**

Claims 1-30 are pending in this application. Claims 1, 10, 17 and 24 have been amended. Claim 23 has been canceled without prejudice. No new matter has been added. Favorable reconsideration and allowance of the pending claims are requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 10, 17 and 24 in order to facilitate prosecution on the merits.

### **Objections to the Claims**

Claims 1, 10, 17 and 24 stand objected to because of informalities. Applicant submits that claims 1, 10, 17 and 24 have been amended to recite "a media access control service data unit (MSDU) size" in accordance with the instructions in the Office Action. Consequently, withdrawal of the claim objections is respectfully requested.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 1-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 7,136,392 to Wentink ("Wentink") in view of United States Patent No. 7,301,965 to Cimini, Jr. et al. ("Cimini") and United States Patent No. 6,577,628 to Hejza ("Hejza"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Applicant respectfully submits that the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-22 and 24-30. Therefore claims 1-22 and 24-30 define over the cited references whether taken alone or in combination. For example, claim 1 has been amended to recite the following language, in relevant part: "servicing the application in a bearer plane." As correctly noted in the Office Action at least on page 23, the above-recited language is not disclosed by Cimini or Hejza. According to the Office Action, the missing language is disclosed by Wentink at Column 1, lines 40-43. Applicant respectfully disagrees.

Applicant respectfully submits that Wentink fails to disclose the missing language of the claimed subject matter. For example, Wentink at the given cite, in relevant part, states:

A straightforward realization of this would be to implement, via the media access layer, a QoS scheme in which each of two time-sensitive streams of multimedia traffic--with each originating at a different station on the LAN--is assigned an identical level of transmission priority.

By way of contrast, the claimed subject matter teaches "servicing the application in a bearer plane." Applicant submits that this is clearly different than the above recited teaching of Wentink.

Applicant respectfully submits that the above recited language of Wentink clearly states that the implementation occurs in the media access layer, rather than the bearer plane as required by claim 1. Furthermore, Applicant submits that Wentink fails to even mention the bearer plane in any context. Therefore, Wentink fails to disclose, teach or

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suggest the missing language. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

For at least these reasons, Applicant submits that claim 1 is patentable over the cited references, whether taken alone or in combination. In addition, claims 10, 17 and 24 have been amended to recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 10, 17 and 24 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 1, 10, 17 and 24.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. See MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 2-9, 11-16, 18-22 and 25-30 that depend from claims 1, 10, 17 and 24 respectively, and therefore contain additional features that further distinguish these claims from the cited references.

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**Conclusion**

It is believed that claims 1-22 and 24-30 are in condition for allowance.

Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the limitations of the independent claims and dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the claims from the cited references, taken alone or in combination, based on additional features contained in the independent or dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,  
KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

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